

Message Text

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SUBJECT: PROPOSED CHANGE IN FRENCH TAX CODE

REF: PARIS 37582

1. ONLY REASON FOR DEFERRING APPLICABILITY OF EXPLANATORY
NOTE WOULD BE TO ALLOW PARTNERS TO RECEIVE DISTRIBUTIVE
SHARE OF PROFITS RATHER THAN GUARANTEED AMOUNTS. UNDER
THE EXPLANATORY NOTE THERE WILL BE NO DOUBLE TAXATION NEXT
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YEAR IF PARTNERS CHOOSE GUARANTEED PAYMENTS. MOREOVER,
UNDER ARTICLE 164-1, THEY MAY NOT BE SUBJECT TO TAX IN
FRANCE ON THE GUARANTEED PAYMENTS TO THE EXTENT THEY
PERFORM SERVICES OUTSIDE FRANCE. (IF FRENCH RAISE ISSUE
FOR PRE-1977 YEARS, COMPETENT AUTHORITY PROCEDURE CAN BE
INVOKED.)

2. ON THE OTHER HAND, DEFERRAL OF NOTE WOULD RELEASE

FRENCH FROM VARIOUS OBLIGATIONS:

A. FOR PARTNERS WHO DO CHOOSE GUARANTEED PAYMENTS,
THE AVAILABILITY OF EMPLOYEE TREATMENT UNDER FRENCH LAW;

B. DEDUCTION OF AMERICAN STATE AND LOCAL TAXES AS
A BUSINESS EXPENSE;

C. EXCLUSION OF EMPLOYER CONTRIBUTIONS TO UNITED
STATES QUALIFIED PLANS; AND

D. ALLOWING DEDUCTIONS FOR CONTRIBUTIONS TO UNITED
STATES CHARITIES.

3. ACCORDINGLY, THERE ARE TWO REASONS FOR NOT DEFERRING
THE EXPLANATORY NOTE:

FIRST, IT COULD BE TO THE DETRIMENT OF AMERICANS.

SECOND, THE INTERPRETATION OF ARTICLE 14 IN THE
EXPLANATORY NOTE--WHICH IS WHAT THE PARTNERS OBJECT TO--
IS OUR ACTUAL INTERPRETATION OF ARTICLE 14. WE AND THE
FRENCH INTERPRET THAT ARTICLE TO REFER TO THE PLACE WHERE
THE FRENCH RESIDENT PARTNERS PERFORM SERVICES RATHER THAN
TO WHERE THE PARTNERSHIP AS A WHOLE PERFORMS SERVICES.
THAT INTERPRETATION HAS NO RELEVANCE TO WHETHER OR NOT
ARTICLE 164-1 OF THE FRENCH TAX CODE IS IN EFFECT, AND TO
IMPLY THAT IT DOES IS NOT ACCURATE.

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4. I FIND IT SOMEWHAT SURPRISING THAT WE SHOULD BE ASKED
TO STATE THAT A VERY CAREFULLY WORKED-OUT AGREEMENT--AND
ONE WORKED OUT AT A TIME WHEN IT WAS HOPED THAT THE
EFFECTIVE DATE OF THE REPEAL OF ARTICLE 164-1 WOULD BE
DEFERRED--SHOULD BE DECLARED INEFFECTIVE IN ORDER TO
ALLOW A SMALL NUMBER OF PERSONS TO CHOOSE DISTRIBUTIVE
SHARES RATHER THAN GUARANTEED PAYMENTS.
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